

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Richard Eugene Davidson,)
Plaintiff,) Civil Action No. 6:14-cv-194-TMC-KFM
vs.)
Warden Kenny Atkinson, Sandra)
Lathrop, Ms Cheek, SIA Jones, and)
Counselor Bryant,)
Defendants.)

REPORT OF MAGISTRATE JUDGE

The plaintiff, a federal prisoner proceeding *pro se*, brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Civ. Rule 73.02(B)(2)(d), (D.S.C.), this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

On May 27, 2014, the defendants filed a motion to dismiss or, in the alternative, for summary judgment. On May 28, 2014, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the motion to dismiss and motion for summary judgment procedures and the possible consequences if he failed to respond adequately. The plaintiff requested an extension of time in which to respond to the motion, which was granted through August 7, 2014. The plaintiff did not file a response to the motion.

As the plaintiff is proceeding *pro se*, the court filed a second order on August 14, 2014, giving the plaintiff through September 4, 2014, to file his response to the motion to dismiss. The plaintiff was specifically advised that if he failed to respond, this action

would be dismissed for failure to prosecute. The order was returned to the court as undeliverable on August 27, 2014, with the notation "Not deliverable as addressed, Unable to forward" marked on the envelope. On August 15, 2014, the plaintiff filed a "motion for voluntary dismissal" of this action. The defendants did not file a response to that motion.

Wherefore, based upon the foregoing, it is recommended that the plaintiff's motion for voluntary dismissal (doc. 48) be granted and this action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Should the district court adopt this recommendation, the defendants' motion to dismiss or, in the alternative, for summary judgment (doc. 33) will be rendered moot.

s/ Kevin F. McDonald
United States Magistrate Judge

September 9, 2014
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).